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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 LUKE BRUGNARA,
16 Defendant.
17

No. CR 14-00306 WHA
CR 08-00222 WHA

**MEMORANDUM REGARDING
DEFENDANT'S BEHAVIOR AT
TRIAL**

18 This memorandum is in response to the Court's request for
19 briefing on Luke Brugnara's potential behavior at trial. (Dkt.
20 306.)

21 Mr. Brugnara has the right under the Due Process Clause of
22 the Constitution "to personal presence at all critical stages" of
23 his prosecution. *Rushen v. Spain*, 464 U.S. 114, 117-18 (1983)
24 (per curiam). "Courts must indulge every reasonable presumption
25

1 against the loss" of the defendant's constitutional right to be
2 present during trial. *Illinois v. Allen*, 397 U.S. 337, 343
3 (1970).

4 If the Court finds Mr. Brugnara is being disruptive during
5 trial, the jury should be excused and the Court should admonish
6 Mr. Brugnara about his behavior outside of the presence of the
7 jury. Mr. Brugnara should be given the opportunity to correct
8 his behavior and remain in the courtroom. If the Court finds
9 that Mr. Brugnara must be removed because he is being disruptive,
10 the Court should allow Mr. Brugnara to agree to follow the
11 courtroom rules at the next recess. If Mr. Brugnara agrees to
12 abide by the rules and to refrain from behaving in a disruptive
13 manner, the Court should allow Mr. Brugnara to personally attend
14 trial once more.

15 The defense proposes the following jury instruction be given
16 at the outset of trial: "The actions, spoken words, facial
17 expressions, or any other behavior of any individual not
18 currently testifying is not evidence in this case and you are not
19 to consider it when deciding whether Mr. Brugnara has committed
20 the offenses with which he is charged. This includes the
21 behavior of Mr. Brugnara unless he is on the witness stand
22 testifying."

23 In the event that the Court deems it necessary to remove Mr.
24 Brugnara from the courtroom during trial, we propose the
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